This court will not be, to use the words of Shankar J. *In re Divorce* [1984] MLJ 158, at p. 160, "a mere rubber stamp" for petitions for divorce.

MEWATI SDN. BHD.

v.

TOP EXCLUSIVE SDN. BHD. & 6 ORS.

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[ORIGINATING SUMMONS NO. T(24) - 28 OF 1992]
7 JUNE 1993

PRACTICE & PROCEDURE: Plaintiff making application for declarations - Whether there is in fact a dispute - Whether declarations sought necessary - Whether application should be granted.

The plaintiff together with the second, third and fourth defendants successfully applied for extraction of timber from State land. The district surveyor had in his plan demarcated the separate areas that had been alloted for the parties but the area allocated for the plaintiff could not be surveyed as the approval of the Director of Lands & Surveys had not been obtained for the issue of the RSP to the plaintiff.

The plaintiff sought a declaration that the second, third, and fourth defendants should only survey their respective areas within the said timberland in accordance with the demarcated sketch map prepared by the district surveyor and that upon issuance of the RSP, the plaintiff be at liberty to survey the said land as demarcated in the sketch map prepared and drawn up by the district surveyor.

Held:

[1] There was no allegation and no evidence that the first, second, third and fourth defendants were going to be caused to be surveyed more areas than approved to them or that they would include in their survey areas that had been approved to the plaintiff. It was a non-issue and there was no dispute before the Court which necessitated a declaration.

[2] The plaintiffs in their rush to stake their claim to the land were knocked out technically because they did not procure the RSP. They did not obtain the RSP because they approached the Director of Forests instead of the Director of Lands & Surveys. This sequel belied the intention behind the plaintiff's application which was absolutely devoid of merit.

[3] There was no cause of action against the first to the fourth defendants since the dispute was between the plaintiffs and the Director of Lands & Surveys. There was no dispute in this case for the Court to determine.

[Plaintiff's application for declarations dismissed with costs to the first, second, third and fourth defendants].

Cases referred to:
Standard Chartered Bank v. Awang bin Ahmat @ Suhaimi [1993] 2 CLJ 486 ***(foll)***
Re Clay [1919] 1 Ch. 66 ***(refd)***

Legislation referred to:
Land Ordinance (Cap. 68), ss. 4, 5
Forests Enactment 1968
Rules of the High Court 1980, O. 28 r. 4
Surveyors (Conduct of Title Surveys) Regulations 1962, reg. 58

Other sources referred to:
The Declaratory Judgment, Zamir, p. 51

For the plaintiffs - Hing Kui Yet; M/s. Idang, Rantau & Co.
For 1st, 2nd, 3rd & 4th defendants - Raymond Tan; M/s. Chin, Lau, Wong & Foo

JUDGMENT

Ian H.C. Chin JC:

I. *The Originating Summons & Affidavit*

The plaintiffs by an originating summons issued on 15 September 1992 sued for:

(1) A declaration that the survey plan in [respect] of the said portion of the said Timberland is null and void;

(2) By reason of prayer 1, a further declaration that neither the 5th, 6th or 7th defendants have the authority to accept and/or approve such purported surveyed plan of the said portion of the said Timberland.

(3) That the first, second, third and/or fourth defendants whether by themselves their servants or agents or otherwise howsoever be restrained until further order from submitting to the fifth, sixth and/or seventh defendants named herein a purported surveyed plan of their alleged common interests/undivided shares in the said portion of the said Timberland under MNRC.114/22/63/33 dated 25 August 1987.

(4) Damages;

(5) Costs; and

(6) any other relief as the Court deems just.

In support and in opposition thereof numerous affidavits were filed. I do not propose to set them out as the plaintiffs and the first to fourth defendants have agreed to a statement of facts. The application was heard on 5 October 1992 and, at the request of the parties, adjourned to a date to be fixed to enable negotiations for an amicable settlement to be had. The plaintiffs on 2 February 1993, after the negotiations had obviously failed, obtained leave to amend the originating summons by praying for two more declarations, *viz*:

(a) A declaration that the second, third and fourth defendants should only survey their respective areas within the said Timberland in accordance with their respective Land Applications P.T2881000-39, P.T.87100453 and P.T.88100060 as demarcated in a sketch map prepared and drawn by Mr. Hiew Ha Min, Juru Ukur Daerah Tawau; and

(b) A declaration that upon issuance of the RSP of the said area applied for within the said Timberland by the sixth defendant the plaintiff be at liberty to survey the said area as demarcated in the sketch map prepared and drawn by the Juru Ukur Tanah Swasta (Sabah).

When the originating summons came up for hearing on 15 March 1993, I gave various directions under O. 28 r. 4 of the RHC 1980 in connection with the hearing of this action and this resulted in the parties, that is the plaintiff and the first to the fourth defendants, agreeing to a statement of facts. The arguments were heard by me on 21 May 1993 and at the outset of the hearing, Counsel for the plaintiffs indicated to the Court that the plaintiffs are abandoning the initial claim for declarations and injunctions but will instead, only pursue their claim for the new declarations that came about as a result of the said amendment. In the course of the hearing of the arguments and at the behest of Counsel for the plaintiffs, the new declaration (b) was amended to read as follows:

(b) A declaration that upon approval made by the Setia Usaha Hasil Bumi and upon issuance of the RSP of the said area applied for within the said Timberland (referred to as FD117/13) by the sixth defendant the plaintiff be at liberty to survey the said area as demarcated in the sketch map prepared and drawn by

the Juru Ukur Daerah Tawau Exhibit "MBS 11(b).

The effect of the amendment was that instead of asking for a declaration that the plaintiffs be allowed to survey in accordance with the map prepared by a licensed surveyor, it asked for the survey to be in accordance with the map prepared by the government district surveyor. The fifth, sixth and seventh defendants did not bother about the hearing because the dispute is between the plaintiffs and the first to the fourth defendants and only in respect of the claim for the two new declarations. Mention must also be made of the injunction that was granted.

On 18 September 1992 the plaintiffs took out an *ex parte* application for and were granted an injunction to restrain the first, second, third and fourth defendants from submitting to the fifth, sixth and seventh defendants a "surveyed plan of their alleged interests/undivided shares in the said Timberland approved under MNRC.114/22/63/33 dated 25 August 1987". On 25 September 1992, the return date, an undertaking was given not to do the thing restrained and the undertaking took the place of the injunction. Suffice for me to remind myself that the injunction and, thereafter, the undertaking, were on the basis of the claim as stated in the unamended originating summons dated 15 September 1992; which was that the survey of the first to the fourth defendants was "null and void". But the originating summons had since the 2 February 1993 been amended and the original claims (including the claim for an injunction) had since 21 May 1993 been abandoned. That, surely, means the end of the injunction or undertaking since the cause of action, upon which the injunction was founded, had been abandoned. With that remark, I have completed the history of this case.

I will set out the relevant agreed facts, rearranged chronologically and reworded to make for better understanding. Since I am of the view that the facts will be better appreciated if reference to the various legislations is first made, I will, therefore, proceed to set out the relevant legislations before adverting to the facts.

II. *The Legislations*

The principal ordinance governing land in Sabah is the Land Ordinance (Cap. 68) ("the Ordinance") which provides that the property in all the land in Sabah is vested solely in the Government of the State of Sabah and this is described as "State land". See s. 5 of the Ordinance. "State land" does not include lands reserved for public purposes and does not include lands already leased or granted. See s. 4 of the Ordinance. Another legislation which also concerns land is the Forests Enactment of 1968 ("Enactment") though it primarily deals with the produce from the forests. Under the Enactment, the Yang di-Pertua Negeri may declare and gazette State land as Forest Reserve. The Enactment also contain provisions dealing with the issuance of licence for the extraction of timber from State land, from Forest Reserve and from alienated land (that is land leased or granted by the Government of the State of Sabah to individuals or corporations) with the attending powers given to the Director of Forests. Anyone interested in the timber standing on State land could make an application for the land concerned under the Ordinance for extraction of the timber. When the application is approved, the Director of Lands & Surveys will direct the government district surveyor of the district where the land is located to issue the necessary papers, called RSP (Registered Survey Paper), to a licensed surveyor nominated by the successful applicant to do the detail survey of the approved area in accordance with the Surveyors (Conduct of Title Surveys) Regulations, 1962 ("Regulations"). The Regulations stipulate that a licensed surveyor shall "obtain from the Lands & Surveys Department the RSP in connection with the survey he is to carry out and shall not carry out the survey without the express sanction of the District Surveyor" and "RSP" has been defined by the Regulations to mean "the Registered Survey Paper containing instructions by the District Surveyor to carry out the survey by the licensed surveyors". When the plan prepared by the licensed survey is accepted and alloted a serial number, under Regulation 58 of the Regulations, by the district surveyor, a temporary occupation licence (TOL), permitting the occupation of the State land applied for, will be issued by the Director of Lands & Survey to the successful applicant. Armed with the approved survey plan and the TOL, the applicant will then proceed to the Forests Department to obtain the necessary licence

from the Director of Forests for the extraction of timber from the area shown in the approved survey plan. As for extraction of timber from Forest Reserve, a slightly different procedure applies but I will not concern myself with the same since this case concerns only State Land and not Forest Reserve. Now to the facts of this case.

III. *The Agreed Facts.*

The plaintiffs, the second, third and fourth defendants (collectively referred to as "the parties") all separately applied for, respectively, 4,000 acres, 4,000 acres, 3,000 acres and 2,000 acres, of State land for extraction of timber. The Director of Forests by a single letter dated 22 October 1987 announced the approval of all the said applications subject to the condition, *inter alia*, that: "Lesen akan dikeluarkan sekaligus bagi keluasan 13,000 ekar (5261 hektar) dalam bentuk lesen khas bagi tempoh lima (5) tahun daripada tarikh lesen berkuatkuasa". This condition, the parties had interpreted to mean that there will be only one licence valid for 5 years for the 13,000 acres that have been approved to the parties. By September 1988 the Director of Lands & Surveys had given the necessary order to the government district surveyor to issue the RSP to enable a licensed surveyor to be employed by the second, third and fourth defendants to survey the areas approved to them. The Director of Forests had by his letter of 2 November 1988 to the plaintiffs permitted the plaintiffs to survey the whole 13,000 acres that were approved to the parties. On 20 February 1990, the parties all agreed to assign their rights and interests in the 13,000 acres of timber land to a company called F.G. Timbers Sdn. Bhd. so as to enable the licence for the 13,000 acres to be issued to F.G. Timbers Sdn. Bhd. By 23 August 1991 a licensed surveyor had pursuant to the instruction of the plaintiff, but without the RSP, produced a survey map demarcating 13,000 acres. On 18 June 1992, the Chief Minister's Department, the approving authority for land for timber extraction, by a letter addressed to the Director of Forests, permitted the issue of one licence to the first defendant in respect of the areas approved to the second, third and fourth defendants. The plaintiffs had also applied, but to the Director of Forests, for a separate licence for their 4,000 acres, supported by a survey map done by the licensed surveyor, and they applied by using the name of F.G. Timber Sdn. Bhd. This application was rejected by the Director of Forests who said, in his letter dated 12 August 1992, that the application should be to the Lands & Surveys Department because the land concerned is State land. By September 1992 the Director of Lands and Surveys had renewed its approval for the survey of the areas of the second, third and fourth defendants. By 2 October 1992 the district surveyor, one Hiew Ha Min, had surveyed and prepared a plan demarcating the areas that were approved to the second, third and fourth defendants and he had issued the RSP to enable the second, third and fourth defendants to employ a licensed surveyor to carry out the detail surveys. This is stated in the letter dated 2 October 1992 from the district surveyor to the plaintiff which reads:

> Mewati Sdn. Bhd., 2 Oktober 1992.
> W.D.T. 9,
> 90400 Sandakan.
>
> **Per**: Permohonan Pengesahan Kedudukan P.T. 88100020 Seluas 4,000 Ekar Untuk Mewati Sdn. Bhd.
> MNRC114/22/63/33 Bertarikh 25 May 1987
>
> Surat tuan MSS,06/92, bertarikh 28 September 1992 dirujuk.
>
> Disertakan bersama ini salinan pelan yang masing-masing menunjukkan kedudukan P.T.-P.T seperti berikut:
>
> (a) Kawasan yang bertanda merah adalah dipohon oleh Syarikat Periklanan Sabah dibawah P.T.88100060 seluas 2000 ekar dan diluluskan untuk pengukuran dalam surat Arahan Ukur. Surat pengukuran RSP.88109086 telahpun dikeluarkan hanya pelan-pelan pengukuran telah diserahkan ke pejabat ini.
>
> (b) Kawasan yang bertanda biru adalah dipohon oleh En. Stanley G. Kandong & 9 peserta dibawah P.T.87100453 seluas 3000 ekar dan diluluskan untuk pengukuran dalam surat Arahan Ukur. Surat pengukuran RSP.87109067 telahpun dikeluarkan hanya pelan pengukuran belum diserahkan ke pejabat ini.
>
> (c) Kawasan yang bertanda kuning adalah dipohon oleh Puan Crispina Ojim & 42 dibawah R.T.8810039 seluas 4000 ekar dan diluluskan untuk pengukuran dalam surat Arahan Ukur. Surat pengukuran

RSP.88109077 telahpun dikeluarkan hanya pelan pengukuran belum diserahkan ke pejabat ini.

(d) Kawasan yang bertanda ungu adalah dipohon oleh Mewati Sdn. Bhd. seluas 4000 ekar dibawah LST. 6000/1256. Untuk makluman tuan RSP (Surat Arahan Ukur) untuk P.T.88100020 belum lagi diluluskan dan dikeluarkan maka itu pelan pengukuran tidak dapat disediakan.

Sekian.

"Berkhidmat Untuk Negara Dengan Bersih, Cekap Dan Amanah"

(Hiew Ha Min)
Juru Ukur Daerah, Tawau.

S.K. L.S.T.6000/1256.

RT/HH/ha.

The district surveyor's plan, referred to in the just quoted letter, clearly demarcated the separate areas that had been alloted for the parties and the letter also states the area for the plaintiffs though demarcated cannot be surveyed yet by a licensed surveyor because the approval of the Director of Lands & Surveys had not been obtained for the issue of the RSP to the plaintiffs, whereas the approval for the second, third and fourth defendants had already been obtained and the RSP had been issued to the second, third and fourth defendants . The difference in the plan produced by the district surveyor and that produced by the licensed surveyor engaged by the plaintiffs is this - in the district surveyor's plan, the area demarcated for the fourth defendant from which the 2,000 acres will be surveyed is very large and, in fact, almost double the size of the area demarcated for the third defendants to survey their 3,000 acres; whereas, in the licensed surveyor's plan, the area demarcated for the fourth defendants to survey their 2,000 acres was reduced by more than half while the area from which the plaintiff can survey their 4,000 acres was enlarged as a result thereof. All that needs be done, in so far as the plaintiffs are concerned, is for them to apply to the Director of Lands & Surveys to give the order to the government district surveyor to issue the RSP to enable the licensed surveyor employed by the plaintiffs to survey the 4,000 acres from the area already demarcated by the district surveyor. That, in effect, and after everything has been laid bare, is what the problem was all about.

IV. *Conclusions*.

It should be apparent from the legislations and the facts that I have just referred to that the plaintiffs' initial and subsequent claims are totally misconceived and an abuse of the process of the Court. When the plaintiffs first took out the originating summons, the allegation in the affidavit filed in support thereof, against all the defendants were that there was "irregularity and illegality entailed with the survey conducted or caused to be conducted by the first defendants" and that the survey was conducted without "having first been granted a survey permit". This was what prompted me to grant the *ex parte* injunction. As the facts now turn out, and not only not disputed at all but well documented as well, the demarcation survey in respect of the areas approved for the second, third and fourth defendants were properly done by the district surveyor and after the necessary approval of the Director of Lands & Surveys was obtained and after the instructions had been given to the district surveyor to issue the RSP to enable a licensed surveyor to conduct the detail surveys of the areas concerned. All these were in accordance with the Regulations. The licence to be issued to the 1st defendants, covering the areas of the second, third and fourth defendants, also had the approval of the Chief Minister's Department. All these facts were disclosed only after the grant of the *ex parte* injunction and all negating the plaintiffs' allegations of irregularity, illegality and lack of approval. In fact, some of the acts complained of by the plaintiffs, like the survey of the area, had not yet occured at the date of the issue of the originating summons but occured (done properly in accordance with the Regulations) after the issue of the originating summons. It is, therefore, not difficult to see why the plaintiffs completely abandoned their original claims and replaced them, by way of an amendment, with two entirely new declarations, one of which had to be further amended. There is no allegation and no evidence that the first, second, third and fourth defendant are going to cause to be surveyed more areas than approved to them or will include in their survey areas that had been approved to the plaintiff. In any

event, how could such survey, assuming it happens, escape the scrutiny of the Department of Lands & Surveys which has to pass the survey. It is a non-issue and therefore there is no dispute before the Court that necessitates the declaration "that the second, third and fourth defendants should only survey their respective areas within the said Timberland in accordance with their respective Land Applications P.T.88100039, P.T.87100453 and P.T.88100060 as demarcated in a sketch prepared and drawn by Mr. Hiew Ha Min, Juru Ukur Daerah Tawau". Until they were stopped by the injunction, the first, second, third and fourth defendants had all along wanted to do the very thing the declaration, sought by the plaintiffs, proposes to declare they should do. The other declaration sought by the plaintiffs smacks of the same absurdity. By 12 August 1992, the plaintiffs were made aware by the Director of Forests that, since their application for a licence concerns State land, they must go through the Lands & Survey Department. By October 1992, the plaintiffs were in possession of a letter and a plan from the district surveyor which shows that an area of 4,000 acreas had been demarcated for the plaintiffs but the survey of the area cannot be had because the Director of Lands & Surveys had not given the order for the issue of the RSP. All that the plaintiffs need do is to sort out with the Lands and Surveys Department the problem of their own creation and which is hindering the survey of their area and this problem has been stated in the letter of the Director of Lands & Surveys dated October 1992 (("DDY-12") in this manner:

> Mengikut rekod Jabatan ini, permohonan tanah bil. 88100020 seluas 4,000 ekar oleh Mewati Sdn. Bhd. untuk membalak telahpun dikemukakan kepada Setiausaha Hasil Bumi melalui surat Jabatan ini LS.1001.4.83/23 bertarikh 6 Januari 1989. Surat Kelulusan untuk pengeluaran kertas ukur berdaftar belum dikeluarkan oleh Jabatan ini. Jabatan ini tidak dapat mengesahkan kedudukan kawasan yang sebenar dipohon kerana sektsa yang terdapat diborang permohonan tanah adalah untuk kawasan seluas 13,000 ekar. Sketsa bagi LSF.1001 bagi permohonan oren di LS.1001.4.83/(25)A.

All that the plaintiffs have to do is to state to the Director of Lands & Surveys that they agreed to the area demarcated by the district surveyor and as shown in the plan prepared by him ("MBS-11A"). That would be the end of the matter. The plaintiffs did not do that and that they did not want to must be because, according to the plaintiffs, the said defendants had already "selected the best area" and had "deprived the plaintiffs an opportunity of getting a fair share of the good timberland" to be found in the 13,000 acres. See the affidavit of Martin Bin Sardin affirmed 15 September 1992. And that was said when the plaintiffs alleged that there was irregularity, illegality and want of approval which I have already adverted to. All these allegations of irregularity, illegality and want of approval were admitted to be without substance and the plaintiffs had abandoned the prayers for the declarations relating thereto. The plaintiffs in their rush to stake their claim to the land were knocked out technically because they did not procure the RSP; they did not obtain the RSP because they approached the Director of Forests instead of the Director of Lands & Surveys. This sequel belies the intention behind the amended Originating Summons. It is absolutely devoid of merit. In any event, there is no cause of action against the first to the fourth defendants since the dispute, if it can be called that, is between the said plaintiffs and the Director of Lands & Surveys. There is no dispute in this case for the Court to determine. See the reported case of *Standard Chartered Bank v. Awang Bin Ahmat @ Suhaimi* [1993] 2 CLJ 486; Zamir on **The Declaratory Judgment,** p. 51. and *Re Clay* [1919] 1 Ch. 66. I therefore dismiss the originating summons herein against all the defendants with costs to be taxed only to the first, second, third and fourth defendants and not to the fifth, sixth and seventh defendants because they did not bother to appear at the hearing.

The injunction or the undertaking is discharged and there will be an inquiry by the Senior Assistant Registrar as to any damages which the first, second, third and fourth defendants may have suffered as a result of the injunction or undertaking and which damages, together with the costs of the inquiry, the plaintiffs shall pay to the said first, second, third and fourth defendants.